

Phone: (212) 885-5270
Fax: (917) 332-3795
Email: TBelknap@BlankRome.com

February 13, 2015

Via ECF

Honorable Valerie E. Caproni
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *SHV Gas Supply & Risk Mgmt v. O.W. Bunker USA Inc., 14-cv-9720*
Nyk Bulk & Project Carriers Ltd. et al v. O.W. Bunker USA Inc., 14-cv-10090
Nippon Kaisha Line Limited et al v. O.W. Bunker USA Inc., 14-cv-10091

Dear Judge Caproni:

We represent Nustar Energy Services, Inc. in the above-referenced matters. We write to advise the Court about a development in a matter pending in the United States Court for the Southern District of Texas which may be relevant to this Court's consideration of NuStar's motions in the three above-referenced matters for orders directing the arrest of interpleaded funds pursuant to Rule C of the Supplemental Admiralty Rules.

The matter pending in Texas is *Jo Tankers AS v. Bergen Bunkers AS et al.*, Civ. Action No. H-14-3310 (S.D. Tex.). It is an interpleader action similar to the referenced actions, also arising out of the OW Bunker bankruptcy. NuStar was named a defendant in that action and, as it has done in the above actions, asserts that it has a maritime lien against the subject vessel. Similar to the motion it filed in the referenced actions, NuStar moved the Texas Court for an order authorizing *in rem* arrest of the interpleaded funds. By order dated February 6, 2015, the Texas Court granted NuStar's motion and issued the attached order.

In the *Jo Tankers* interpleader action, NuStar negotiated a stipulation with Jo Tankers to refrain from arresting its vessel the JO ILEX in return for Jo Tankers agreeing (1) to make an appearance on behalf of the vessel in the Southern District of Texas, (2) that the court possesses exclusive *in rem* jurisdiction and venue over the claim, and (3) that the funds deposited by

405 Lexington Avenue New York, NY 10174-0208

www.BlankRome.com

Boca Raton • Cincinnati • Houston • Los Angeles • New York • Philadelphia • Princeton • San Francisco • Shanghai • Tampa • Washington • Wilmington



February 13, 2015

Page 2

Owners represent the *res* that would be subject to a maritime lien if established by NuStar. *See* accompanying stipulation. NuStar would not have consented to Jo Tankers' interpleader action but for the stipulation reached in that case, which sets forth the same demands NuStar and U.S. Oil Trading LLC asserted in the joint memorandum of law filed on January 14, 2015 (*see* Doc. 46 in SHV Gas matter) that are necessary to protect their respective *in rem* maritime lien claims.

As previously detailed in its joint briefing to the Court in these consolidated actions, NuStar's primary position is that this Court should vacate or modify the interpleader injunctions to allow arrest of the subject vessels on NuStar's *in rem* maritime lien claims. If the Court does not grant that relief, however, then in the alternative it should grant NuStar's motions for orders directing arrest of the interpleaded funds as was done in the Texas action.

We thank the Court in advance for its consideration in this matter.

Respectfully submitted,

Thomas H. Belknap, Jr.

Thomas H. Belknap, Jr. /AEA

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JO TANKERS AS,

Interpleader-Plaintiff,

V.

BERGEN BUNKERS, AS, NUSTAR
ENERGY SERVICES, INC., O.W. BUNKER
USA, INC., and ING BANK,

Defendants-Claimants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. H-14-3310

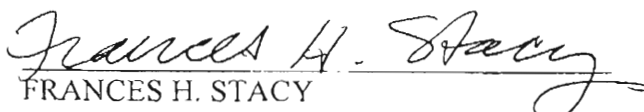
ORDER AUTHORIZING ISSUANCE OF WARRANT OF ARREST

Before the Magistrate Judge upon referral from the District Judge is NuStar Energy Services, Inc.'s Motion for Issuance of Warrant of Arrest (Document No. 7). Having considered the motion, the pleadings, and the supplemental brief filed by NuStar Energy Services, Inc. on February 2, 2015, it is

ORDERED that NuStar Energy Services, Inc.'s Motion for Issuance of Warrant of Arrest (Document No. 7) is *GRANTED* and a Warrant of Arrest shall be issued against funds held in the Court's Registry. It is further

ORDERED that the United States Marshal Service for the Southern District of Texas shall serve a copy of this Order and NuStar's Verified Answer and Claim with the said Warrant of Arrest on the Court's Registrar, and return the warrant promptly.

Signed at Houston, Texas, this 6th day of February, 2015


FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JO TANKERS AS,

Interpleader-Plaintiff,

v.

BERGEN BUNKERS, AS,
NUSTAR ENERGY SERVICES, INC.,
O.W. BUNKER USA, INC., and
ING BANK,

Interpleader-Defendants.

§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 4:14-CV-03310

Filed under Rule 9(h) Fed. R. Civ. P.

(ADMIRALTY)

WARRANT OF ARREST

TO: U.S. MARSHAL OF THE UNITED STATES COURT FOR THE SOUTHERN
DISTRICT OF TEXAS

In the name of the United States District Court for the Southern District of Texas, you are
commanded to arrest the funds held in the Court's Registry as deposited by JO TANKERS AS
on behalf of the M/T JO ILEX.

YOU ARE HEREBY further commanded to serve a copy of NuStar Energy Services,
Inc.'s Verified Answer and Claim, the Order Authorizing the Issuance of Warrant or Arrest, and
this Warrant on the Court's Registrar, and promptly return your writ.

Dated: 2.6.15

David Bradley, Clerk

United States District Court
Southern District of Texas

By: BW Harte
Deputy Clerk

Case 4:14-cv-03310 Document 6-5 Filed in TXSD on 12/11/14 Page 1 of 2

EASTHAM, WATSON, DALE & FORNEY, L.L.P.

ATTORNEYS AT LAW
THE NIELS ESPERSON BUILDING
808 TRAVIS, SUITE 1300
HOUSTON, TEXAS 77002-5769

WILLIAM A. DURHAM
PARTNER
durham@easthamlaw.com

TELEPHONE (713) 225-0005
FACSIMILE (713) 225-2907
firm@easthamlaw.com

December 9, 2014

NuStar Energy Services, Inc.
c/o Blank Rome LLP
700 Louisiana, Suite 4000
Houston, TX 77002

Attn: Mr. Keith B. Letourneau

Dear Sirs:

Vessel: M/V JO ILEX: IMO 9505936 (hereinafter the "Vessel")
Claim: Maritime Lien Claim against the Vessel for alleged unpaid bunkers supplied to the Vessel (Anticipated Arrest at Belgium): Invoice Amount: USD \$267,664.11 (hereinafter the "Funds"); Invoice Number 90430667 (hereinafter the "Claim")

Jo Tankers, AS has filed an interpleader action in the U.S. District Court for the Southern District of Texas, Houston Division, Civil Action No. 4:14-cv-03310, styled *Jo Tankers, AS v. Bergen Bunkers, AS, NuStar Energy Services, Inc., O.W. Bunker USA, Inc. and ING Bank*. NuStar Energy Services, Inc. ("NuStar") claims a maritime lien against the vessel JO ILEX for the provision of bunkers as addressed above, for which NuStar has not received payment.

In consideration of your consenting to refrain from taking any action resulting in the arrest or detention of the Vessel, for the purpose of founding jurisdiction and/or obtaining security in respect of the above mentioned Claim, we, Jo Tankers AS, as disponent owner and commercial operator of the Vessel, hereby stipulate that the funds deposited by Owners into the Court's Registry in the above styled case represent the *res* that would be subject to a maritime lien if established by NuStar.

We further undertake to file or cause to be filed an appearance and Claim of Owner on behalf of the Vessel in an action asserting the Claim filed or to be filed by you in the U.S. District Court for the Southern District of Texas, Houston Division, which Court shall have exclusive *in rem* jurisdiction and venue over the Claim, and such appearance shall be made whether the Vessel is lost or not lost and irrespective of the presence or absence of the Vessel within the jurisdiction of the Court. This Agreement and the Funds will stand as substitute security for your *in rem* maritime lien Claim against the Vessel.

226037 4CCLHD129.WAD



NuStar Energy Services, Inc.
c/o Blank Rome LLP
December 9, 2014
Page 2

It is the intent of this Agreement that the rights of the parties shall be precisely the same as they would have been had the Vessel been arrested under process issued out of the United States District Court, then taken into custody by the United States Marshal under said *in rem* process, and released upon the filing of a release bond in the foregoing amount and a claim of owner.

This Agreement shall be governed by and construed in accordance with U.S. maritime law.

Very truly yours,

Jo Tankers AS
Disponent Owner and Commercial Operator of the
M/V JO ILEX

By EASTHAM, WATSON, DALE & FORNEY, L.L.P.

By: 

William A. Durham
(Per Authority provided November 20, 2014)